

STATE OF HAWAII
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
Honolulu, Hawaii

May 13, 2011

REF:OCCL:DH

CDUA KA-3121

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Request for Third Time Extension for Conservation District Use Permit (CDUP) KA-3121 for the Allen's Single Family Residence (SFR), Swimming Pool, Pool Decking, Retaining Walls, Water Well, and Landscaping

LANDOWNER: Greg and Joanne Allen, 161 Wailua Road, Kapaa, Hawaii 96746

LOCATION: Wailua Ahupuaa, Kawaihau District, Island of Kauai

TMK: (4) 4-2-003:002

PARCEL AREA: 33,183 Square Feet

AREA OF USE: 3,495 Square Feet

SUBZONE: Resource

BACKGROUND:

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands (OCCL) notes CDUP KA-3121 was approved by the Board of Land and Natural Resources (BLNR) on May 23, 2003 regarding the construction of a Single Family Residence (SFR), swimming pool, pool decking, retaining walls, water well, and landscaping; subject to fifteen (15) terms and conditions (**Exhibit 1**).

Condition # 3 notes, "any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed."

On February 14, 2006, the applicant asked and received a two year time extension for KA-3121 to complete construction by May 23, 2008 (**Exhibit 2**).

On April 25, 2008, Mr. Allen asked for a second time extension of three years to complete construction. On June 13, 2008, the BLNR approved the request to extend the construction deadline until May 23, 2011 (**Exhibit 3**).

On February 22, 2011, Mr. Allen asked for a third time extension of three years to complete construction. On March 9, 2011, the OCCL asked the Kauai District Land Office agent to conduct a site inspection of the subject parcel (**Exhibit 4**). Mr. Allen indicates the SFR's slab was poured, the rebar installation was completed, well was constructed, 3/4 of the retaining walls have been constructed and landscaping was completed.

Mr. Allen notes he is still under financial pressure from the other development projects that he owns, and he has been unable to divert financial resources to completing the SFR. Mr. Allen indicates he hopes to complete construction within three years.

AUTHORITY FOR GRANTING TIME EXTENSIONS:

The authority for granting time extensions is provided for in Section 13-5-43 (c), Hawaii Administrative Rules (HAR), TIME EXTENSIONS, "time extensions may be granted by the Board upon the second or subsequent request for a time extension on a Board permit, based on supportive documentation from the applicant."

BASIS FOR TIME EXTENSIONS:

A time extension may be sought when an applicant is unable to initiate a project within the stipulated time frame. The BLNR grants time extensions when an applicant demonstrates some sort of hardship or delay in completing work on the project. Moreover, the applicant should be able to demonstrate that the hardship or delay was not self-imposed and that some good faith effort has been made to complete the project.

DISCUSSION:

Staff notes Mr. Allen is asking for a third time extension of three years to extend the deadline to complete construction of his SFR until May 23, 2014.

Staff notes CDUA KA-3121 was approved on May 23, 2003 almost eight years ago. Staff notes the rationale for the request for the first, second, and third time extension have been the same: 1) Mr. Allen notes he is under financial pressure from the other development projects that he owns; and 2) Mr. Allen has been unable to divert financial resources to complete the SFR.

Staff is agreeable to a third time extension of three years to complete construction by May 23, 2014. However, if the Mr. Allen is unable to meet the May 23, 2014 deadline to complete construction staff will recommend as a condition of CDUA KA-3121 that the Board of Land and Natural Resources will revoke CDUA KA-3121 for the Allen Single Family Residence.

RECOMMEDATION:

Staff, therefore, recommends the following:

That the Board of Land and Natural Resources **APPROVE** this request for a time extension for Conservation District Use Permit KA-3121, subject to the following condition:

1. That the Board of Land and Natural Resources approve a three year time extension request to complete construction of the SFR by May 23, 2014; and
2. Should Mr. Allen seek additional extensions beyond the May 23, 2014 deadline staff will recommend that the Board of Land and Natural Resources will revoke CDUP KA-3121 for the Allen Single Family Residence.

Respectfully submitted,



DAWN T. HEGGER
Senior Staff Planner

Approved for submittal:



WILLIAM J. AILA, JR, Chairperson
Department of Land and Natural Resources

LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

2003 JUN 10
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:PB:DH

FILE NO.: KA-3121B

Greg and Joanne Allen
161 Wailua Road
Wailua, Hawaii 96746

JUN - 3 . 2003

Dear Mr. and Mrs. Allen:

This letter is to inform you that Conservation District Use Application (CDUA) KA-3121B has been approved by the Board of Land and Natural Resources on May 23, 2003 regarding the construction of your Single Family Residence (SFR), swimming pool, pool decking, retaining walls, water well, and landscaping, and is subject to the following terms and conditions:

- 1) The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State and County governments;
- 2) The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 4) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

EXHIBIT 1

- 5) The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
- 6) The applicant, prior to construction, shall submit construction plans regarding the four (4) retaining walls to the Department of Transportation, Highways Division for approval; after approval the applicant shall submit a copy of the construction plans with DOT's approval to the Department;
- 7) The applicant will minimize visual impacts to Wailua River and its public users by using appropriate lighting, house color and landscaping; The landscaping plan shall be approved by the Department prior to work being undertaken on the proposed project;
- 7 8) The applicant shall submit earth tone color schemes to the State Historic Preservation Division for approval, prior to work being undertaken on the proposed project;
- 9) The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control;"
- 10) The applicant shall plan to minimize the amount of dust generating materials and activities. Material transfer points and on-site vehicular traffic routes shall be centralized. Dusty equipment shall be located in areas of least impact. Dust control measures shall be provided during weekends, after hours and prior to daily start-up of project activities. Dust from debris being hauled away from the project site shall be controlled. Landscaping and dust control of cleared areas will be initiated promptly;
- 11) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 12) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (587-0013), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary.

- 13) Other terms and conditions as may be prescribed by the Chairperson;
- 14) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void; and
- 15) Concrete pad areas shall not be enclosed. Should this occur, enforcement proceeding will be brought.

Please acknowledge receipt of this permit and acceptance of the above conditions by signing in the space provided below and returning a copy to the Office of Conservation and Coastal Lands within thirty (30) days.

If you have any questions regarding this matter please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,



Dierdre S. Mamiya, Acting Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged: 

Date: 6/07/03

Cc: Kauai Board Member
Kauai District Land Agent
Commission on Water Resource Management
Kauai County
Department of Planning
Department of Health

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCE
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CONSERVATION AND COASTAL LANDS
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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOIOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:DH

FILE NO.: CDUA KA-3121

Greg and Joanne Allen
161 Wailua Road
Kapaa, Hawaii 96746

JUN 13 2008

Dear Mr. and Mrs. Allen,

SUBJECT: Conservation District Use Application (CDUA) KA-3121 Second Time Extension Request for Greg and Joanne Allen Single Family Residence (SFR) and Accessory Structures, Kawaihau District, Island of Kauai (4) 4-2-003:002, by Greg and Joanne Allen, 161 Wailua Road, Kapaa, Hawaii 96746

We wish to inform you that on June 13, 2008, the Board of Land and Natural Resources (BLNR) approved your request to extend the construction deadline for Conservation District Use Application (CDUA) KA-3121 for the Allen Single Family Residence (SFR), Kawaihau District, Island of Kauai, Subject Parcel TMK: (4) 4-2-003:002.

Therefore, the expiration date to complete construction for the SFR is now May 23, 2011.

Should you have any questions, please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Samuel J. Lemmo", is written over the word "Sincerely," and extends down towards the typed name.

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Kauai District Land Office
County of Kauai Planning Department

EXHIBIT 3

Site Inspection Photos 3/9/11 by
Kauai District Land Office



DH
KA-11-4

Greg Allen
161 Wailua Road
Kapaa, HI 96746

January 13, 2011

2011 FEB 22 P 1:19

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

State of Hawaii
Department of Land and Natural Resources
Office of Conservation and Coastal Lands
PO Box 621
Honolulu, HI 96809

Regarding: CDUP KA3121

Aloha Dawn,

I would like to request an additional 3-year extension of CDUP KA3121. Work is progressing on this residence.

I hope you can give me a 3-year extension. I am sorry this is taking so long. I am doing the work myself and trying to pay as I go. About the time I got this permit, my family and I had also purchased the right to 10 lots in a proposed subdivision. The subdivision developers got into financial difficulty and because we also held a second position mortgage on the property, we ended up having to take over the project. We had to do this in order to avoid losing our investment. The first position mortgage holder was pursuing a foreclosure action. I have spent a lot of my time and energy trying to solve the problems with that project. The project now is looking good and we're expecting final permits for a first phase this summer. We also have plans for a second phase that would provide Kauai with much needed work force housing. That process will require a zoning amendment; the GP is already in place. I also have an income property "Harbor Mall" that I manage. Both these projects have required my time and money and have caused delays to the house project. Due to the economic downturn the mall and subdivision are for sale. We hope for something to happen this year. I want to complete this house as soon as possible and believe that I will be able to within the next three years. I apologize that this has taken so long and ask for your understanding. Thank you. Hope you are all well.

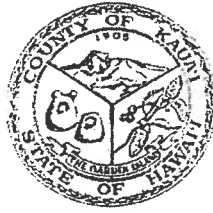
Sincerely,


Greg Allen

808-645-4500

EXHIBIT 4

Bernard P. Carvalho, Jr.
Mayor



Gary K. Heu
Managing Director

RECEIVED
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

OFFICE OF THE MAYOR

2011 MAR -9 A 10: 05

County of Kaua'i, State of Hawai'i

4444 Rice Street, Suite 235, Lihue, Hawai'i 96746
TEL (808) 241-4900 FAX (808) 241-6877

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

March 1, 2011

Mr. Greg Allen
161 Wailua Road
Kapa'a, Hawai'i 96746

RECEIVED
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII
2011 MAR -9 P 12: 02

Dear Greg:

Allow me to extend my deepest Mahalo and congratulations for the recent dedication of the Kapa'a solar project. This is such a huge accomplishment and will benefit Kaua'i for many years to come. I know you played a significant role in its development and hope that you know we are very grateful for your efforts.

I'm also hopeful your plans for additional housing for Kapa'a will move forward expeditiously, as this project could also provide many benefits such as affordable housing and community facility assets – especially for the nearby schools.

Best wishes, Greg, for continued success and Mahalo again for your contribution to Kaua'i's renewable energy future!

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard P. Carvalho, Jr.", is written over a horizontal line.

Bernard P. Carvalho, Jr.
Mayor

An Equal Opportunity Employer